UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

JTH TAX, INC. d/b/a LIBERTY TAX SERVICE	:	
	:	
Plaintiff	:	
	:	
vs.	:	Civil No. 2:07CV170
	:	
KENYA WHITAKER, *et al*,	:	
	:	
Defendant	:	

DEFENDANTS' BRIEF IN REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO TRANSFER

Defendants Kenya Whitaker and Easy Software Solutions, LLC, by counsel, CARR MALONEY P.C., respectfully reply to plaintiff Liberty Tax Service's Opposition to the Motion to Transfer.

ARGUMENT

The basis for plaintiff's Complaint arises out of events that occurred in Texas. In fact, the only factual allegation in the Complaint details an encounter between Geoff Knapp, a Liberty employee, and Ms. Whitaker, who allegedly refused access to its customers' tax preparation records.[1] This encounter took place at Ms. Whitaker's offices in Texas. Neither Mr. Knapp, Ms. Whitaker, nor anyone else who witnessed these events (whose names and expected testimony are listed in the Motion to Transfer) resides in or anywhere near Virginia Beach, Virginia. Liberty also alleges that its private investigator, Mr. Engstrom, has information and documentation

[1] Plaintiff represents that Mr. Knapp's residence in Rockville, Maryland "is a short drive from Virginia." That may be true to some parts of Northern Virginia, but certainly not to Virginia Beach, which is over 200 miles away. Moreover, according to the phone number on his emails he was located in Phoenix, Arizona during the relevant time.

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that allegedly shows defendants in breach of Trademark laws and the Franchise Agreement. Mr. Engstrom's declaration clearly states that he resides in Texas, and his contact with Byron Whitaker took place at Whitaker's offices in Texas. Liberty also relies on the Declaration of Cory Hughes, a resident of Kansas City, Missouri, to support the allegations in its Complaint. In fact, the only declaration attached to the Complaint from a Virginia Beach resident is that of Rebecca Ross, who merely performed an internet search after Liberty terminated the Agreement that could have been conducted anywhere.

In its Opposition, Liberty, not surprisingly, attaches numerous affidavits from employees in its Virginia Beach office in an attempt to assert that venue is appropriate before this Court. Yet Liberty's attempt to pepper the Court with affidavits from locals obscures the fact that its Complaint is based on events that occurred in Texas and not Virginia Beach. Few, if any of the affidavits attached to its Opposition have anything to do with the factual allegations in the Complaint. For example, Liberty asserts that it needs June Montalbano to testify as to the authenticity of the Whitaker's Franchise Agreement, and Kathleen Curry to testify as to the actual termination of the Agreement. Yet the neither of these issues will likely be in dispute. Liberty is proffering this testimony as a red herring designed to divert the Court's attention from the substantive testimony from individuals who are located in Texas, Missouri and Maryland.

Witness access and convenience are often dispositive in the transfer decision. This "factor is often the most important in balancing for a potential § 1404(a) transfer, but the influence of this factor may not be assessed without reliable information identifying the witnesses involved and specifically describing their testimony." *JTH Tax Inc., v. Lee*, --- F.Supp.2d ----, 2007 WL 1075186 at 4 (E.D.Va.2007). Moreover, "[i]nconvenience to a witness whose testimony is cumulative is not entitled to greater weight. By contrast, greater weight should be accorded inconvenience to witnesses whose testimony is central to a claim and whose credibility is also likely to be an important issue. *Bd. of Trs., Sheet Metal Worker Nat'l Fund v. Baylor Heating & Air Conditioning, Inc.,* 702 F.Supp. 1253, 1258 (E.D.Va.1988). Liberty's affidavits do not present any testimony that is likely to address important issues in the case. Rather, its own declarations provide testimony from witnesses necessary to support the allegations asserted in the Complaint, and none of these witnesses are located in Virginia Beach.

WHEREFORE, defendants Kenya Whitaker and Easy Software Solutions, LLC respectfully request that this Court grant their Motion to Transfer Venue.

KENYA WHITAKER
EASY SOFTWARE SOLUTIONS, LLC

By: /s/ Dennis J. Quinn________
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of May, 2007, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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